

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

|                           |   |                              |
|---------------------------|---|------------------------------|
| GEORGE WONG,              | ) | Crim. No. 11-00968 SOM       |
|                           | ) | Civ. No. 13-00261 SOM/BMK    |
| Petitioner,               | ) |                              |
|                           | ) |                              |
| vs.                       | ) | ORDER DENYING CERTIFICATE OF |
|                           | ) | APPEALABILITY                |
| UNITED STATES OF AMERICA, | ) |                              |
|                           | ) |                              |
| Defendant.                | ) |                              |
| _____                     | ) |                              |

**ORDER DENYING CERTIFICATE OF APPEALABILITY**

Before the court is an application by George Wong for a certificate allowing him to appeal this court's denial of his petition to vacate, set aside or correct his sentence under 28 U.S.C § 2255. An appeal may not be taken to the court of appeals from a final order in a § 2255 proceeding "[u]nless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c) (1) (B). The court shall issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c) (2). When a district court denies a § 2255 petition on the merits, a petitioner, to satisfy the requirements of section 2253(c) (2), "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In its order denying Wong's petition, this court noted that "Wong received a sentence that was almost three years less than either the [Presentence Investigation Report] or the sentencing guidelines recommended, and [that] he fail[ed] to articulate any way in which different counsel could plausibly have achieved a better result." ECF No. 64. Therefore, the court held that "even if all of Wong's allegations [were] true, they would not demonstrate that Wong was prejudiced." Id.

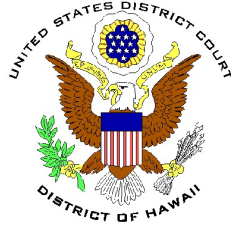
Because Wong does not persuasively assert any prejudice caused by his counsel's performance, no reasonable jurist would find this court's assessment of Wong's Sixth Amendment claim debatable or wrong.

Wong also seeks to appeal this court's order based on what he describes as "new evidence provided during Motion to Vacate Under 28 U.S.C. 2255 arised by Attorney's email information turned in to government." ECF No. 65. To the extent Wong is referring to the evidence of alleged attorney ineffectiveness he presented in his petition, that "new evidence" does not provide an independent ground for appeal, and, as the court ruled, does not explain why Wong was prejudiced. If Wong is referring to some other "new evidence" that he has not yet presented to the court, he may not seek an appeal based on claims that have not yet been submitted to and adjudicated by this court.

Wong's application for a certificate of appealability is denied.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, December 16, 2013.



/s/ Susan Oki Mollway  
Susan Oki Mollway  
Chief United States District Judge